

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:NCS:GBO:TL-N-3056-00
RARowley

date: JUN 19 2000

to: Chief, Examination Division, North-South Carolina District
CEP Case Manager [REDACTED]

from: District Counsel, North-South Carolina District, Greensboro

subject: [REDACTED] -
Proposed Agreement Regarding Future Examination Activity

By memorandum dated May 19, 2000, CEP Case Manager [REDACTED] forwarded for our comments an agreement which the Service has been asked to enter into by [REDACTED]. We have several observations and concerns relative to that agreement.

First, the agreement purports to set forth binding commitments on the part of the Service, and is not worded as a mere statement of present intent which is subject to change at the will of the Service. Thus, the first paragraph of the agreement states that its purpose is "to specify courses of action regarding future examination activity." In an apparent attempt to satisfy the consideration requirement for a contract, the second paragraph states that the agreement is intended to "relieve burden [sic] to both the Internal Revenue Service and [REDACTED]." As (arguably) further consideration from the taxpayer, numbered "guideline" 2 of the agreement provides that the taxpayer is willing to meet with the Service's case manager shortly after filing the return to discuss its contents, and that the taxpayer will notify the case manager prior to filing any pre-filing notification agreement. Also, in numbered guideline 4, the taxpayer agrees to file amended returns to automatically make any adjustments resulting from the taxable years [REDACTED] through [REDACTED] (which are currently before Appeals) that impact other years, and to notify the case manager when any such amended returns are filed. However insubstantial the "benefits" to the Service or the promises of the taxpayer, they probably would be deemed to constitute sufficient consideration to bind the Service to the terms of the agreement.

In our opinion, those terms pose potential problems for the Service. Numbered "guideline" 1 provides that if it becomes "necessary" to conduct an examination for the taxable years [REDACTED]

and [REDACTED], then "alternate approaches" will be used. Under that provision the taxpayer might dispute the Service's right to conduct an examination on the ground that it is not "necessary," and might contest the manner of conducting the examination on the ground that it does not utilize the requisite "alternative approaches." Numbered "guideline" 3 requires that, within one year after filing of its tax return, the case manager notify the taxpayer of the Service's intention to either conduct an examination or accept the return as filed. At best, the Service could be forced to make that decision within the one-year period; at worst, a failure to so decide within that time period could be considered to preclude the Service from conducting any examination at all. The agreement states that "modifications [to the process specified in the agreement] will not be made by either party without consultation with the other party." What limitations such provision might impose on the Service is unclear and potentially subject to dispute between the parties.

Thus, by entering into the agreement, the Service would subject itself to constraints as to both the extent and timing of future examination activity. We see no benefits to the Service from the agreement; nor are we aware of any precedent or authority for such agreement.

If we may be of any further assistance, please contact Ross Rowley of this office, telephone 378-2123.

/s/ PGT
PAUL G. TOPOLKA
District Counsel